IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

S.B. CIVIL WRIT PETITION NO.1022/1994
(Prem Dass Vaishnav Vs. State of Raj. & Ors.)

Date of Judgment : August 14th, 2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. B.N. Kalla, for the petitioner.
Mr. Shyam Ladrecha, Addl. Govt. Advocate for State.

By way of filing this writ petition, the petitioner is claiming relief that the respondents may be directed to give him minimum pay scale prescribed for the post of LDC/Store Munshi since 1985, the date from which he is discharging duties as LDC alongwith all arrears and allowances, which is applicable for the post of LDC and his case may be considered for regular appointment as LDC with all consequential benefits.

According to the facts narrated in the writ petition, the petitioner was appointed initially on 2.12.83 as daily-rated employee in the Office of

respondents. Thereafter, he was declared semi-permanent in accordance with Rule 3 (3) of Rajasthan Work Charged Service Rules, 1964 vide order Annexure-1 w.e.f. 1.4.1986 in the pay-scale of Rs.710-910/. In the aforesaid order Annexure-1, the name of the petitioner finds mention at Serial No.105 and his date of appointment is shown as 2.12.83 and in column of possessing qualification, it is mentioned that the petitioner is higher secondary and was appointed as Helper Grade-II. In the petition, it is stated that he was possessing Higher Secondary qualification as evident from mark-sheet Annexure-7, therefore, he was assigned duties of LDC by the Department and he is discharging duties of LDC since his appointment, therefore, he is entitled to get salary in accordance with Article 39-D of the Constitution of India because he is performing the duties as LDC and is qualified for the post.

It is submitted by the learned counsel for the petitioner that vide notification dated 21.12.89, an amendment was made in Rajasthan Subordinate Offices Ministerial Staff Rules, 1957 and Rule 7 was added by which it was provided that those work-charged employees who had completed two years of service as on 1.4.1988 and possessing qualification of secondary or High School from Board of Secondary Education, Rajasthan, they will be considered for appointment on regular basis on the post of LDC irrespective of the

fact that they are working on any post under work-charged cadre against the vacancies, which were in existence on 1.4.1988 and out of those vacancies, the appointment will be made from the cadre of work-charged upto the extent of 50% vacancies which were in existence from 1.4.1988. The said amendment was made on 21.12.1989 and in pursuance of said amendment, the Superintending Engineer, PHED, Circle Udaipur invited information of all those work-charged employees who were working in the Department and were possessing qualification of L.D.C. and for the same a communication was sent to all the subordinate offices of Public Health & Engineering Department of Circle Udaipur and in pursuance thereof, the petitioner's candidature was recommended vide communication dated 6.8.1993 by the Assistant Engineer, PHED, Revenue Division-II, Udaipur to the Executive Engineer, PHED, Construction & Revenue, Division Udaipur in which it was recommended that the petitioner is possessing qualification for the post of LDC as required under provisions of the Rules of 1957 and he will clear the type test later on as provided in the amendment dated 21.12.89 as such his case may be considered for appointment in accordance with the amendment dated 21.12.1989 for the post of LDC. It is also informed by the Asstt. Engineer that in his Division only petitioner is possessing qualification of Secondary and he is working as work-charged employee on the post of Helper Gr.II though case of the petitioner was

recommended for regular appointment on the post of LDC and he was discharging duties of LDC also as per the directions of the Department but he was not granted such relief by the Department, therefore, the petitioner has prayed that the respondents may be directed to grant him regular pay-scale of LDC w.e.f. his initial appointment because he is performing duties as LDC which is evident from Annexure-2 dated 8.2.1985, Annexure-4 dated 31.3.1989 and Annexure-5 dated 2.11.1989. Thus, he is fully entitled to get relief of regular pay scale as well as regularization as per recommendations made by Assistant Engineer in pursuance of communication sent by Superintending Engineer, PHED, Udaipur dated 26.7.1993 (Annexusre-7) under the notification dated 21.12.1989.

Per contra, the respondents by way of filing reply opposed the writ petition and stated that the petitioner is not entitled for regular pay-scale w.e.f. the date of his initial appointment for the post of L.D.C. It is argued that the petitioner is work-charged employee and if for sometime, he has been assigned some duties for maintaining ledger or to work in the Office etc., does not create any right to pay-scale of LDC because admittedly he was work-charged employee and he was declared semi-permanent on the post of Helper Gr.II. Learned counsel for the respondents also argued that the petitioner's name was recommended for considering his case for appointment

on the post of LDC in accordance with the amendment dated 21.12.1989 but the petitioner was not fulfilling the basic qualification of LDC as he was not having experience of typing. The communication for recommendation for consideration of an employee to the higher authorities does not confer any right to the employee concerned, therefore, the petitioner's candidature was not considered due to lack of knowledge of typing as such the petitioner is not entitled to get any relief. It is also contended that the appointment on the post of LDC is within the purview of Rajasthan Public Service Commission, therefore, the petitioner is not entitled to get any relief by this Court for pay-scale and regularization of his services for the post of L.D.C.

I have considered the rival submission made on behalf of both the parties.

It is admitted position of the case that the petitioner was appointed on the post of Helper Gr.II on daily wage basis and later on he was declared semi-permanent w.e.f. 1.4.1986 meaning thereby the petitioner was working in the cadre of work-charged employee with the department. It is also true that for some time, he was directed to perform some duties for maintaining ledger etc. as LDC but mere working on the post of LDC on the direction of higher authorities does not confer any right to get regular pay-scale

because for the post of LDC there are some different responsibilities and duties but admittedly as evident from documents filed by the petitioner, he has worked sometime for maintaining ledger etc. and he has performed some duties in the Office. Therefore, in my opinion, the petitioner is not entitled to get minimum of the pay-scale right from his initial appointment or from the date of declaring him as semi-permanent employee but with regard to considering his candidature under notification dated 21.12.1989 made in the Rules of 1957, in my opinion, the respondents were under obligation to consider the case of the petitioner because in the notification it is specifically mentioned that after appointment on the post of LDC against the existing vacancies as on 1.4.1988, an incumbent is required to pass type test within one year from the date of his appointment but in reply, it is stated that the petitioner was not having experience of typing, therefore, he was not considered to be appointed on the post of LDC as per the amendment made vide notification dated 21.12.1989. The said notification dated 21.12.1989 reads as follows :

"सं.एफ. 3(1) कार्मिक/क-II/88 जयपुर दिनांक 21-12-89

अधिसूचना

भारत के संविधान के अनुच्छेद 309 के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राजस्थान के राज्यपाल एतदद्वारा

राजस्थान अधीनस्थ कार्यालय लिपिक वर्गीय कर्मचारी नियम, 1957 में निम्नलिखित सशोंधन करते हैं, अर्थात -

संशोधन

नियम 7 में संशोधन - राजस्थान अधीनस्थ कार्यालय लिपिक वर्गीय कर्मचारी नियम, 1957 (इसमें इसके पश्चात यह कथित नियमों के नाम से संदर्भित किया जाएगा) के नियम 7 के उपनियम 1 के खण्ड (ख) के विद्यमान परन्तुक के पश्चात निम्नलिखित परन्तुक और जोडा जायेगा, अर्थात -

"इन नियमों में कुछ भी प्रतिकुल अन्तर्विष्ट होने पर भी, सार्वजनिक निर्माण विभाग/सिंचाई (इन्दिरा गांधी नहर बोर्ड (जिसमें इन्दिरा गांधी नहर बोर्ड-कंमाड एरिया विभाग भी सम्मिलित है) लोक स्वास्थ्य अभियांत्रिकी विभाग/आयुर्वेद विभाग में वर्क चाज्ड आधार पर नियोजित व्यक्तियों, जिन्होंनें 1-4-1988 को कम से कम दो वर्षों की सेवा पूर्ण करली है और सरकार द्वारा मान्य माध्यमिक शिक्षा बोर्ड राजस्थान की हाई स्कूल/या सैकेण्डरी/ प्रवेशिक्षा परीक्षा उत्तीर्ण करली है, को निम्नलिखित सदस्यों से गठित समिति द्वारा योग्य पाये जाने पर, उनसे सम्बन्धित विभागों में कनिष्ठ लिपिक के रिक्त पदों पर नियमित रूप से 1 अप्रैल 1988 को कनिष्ठ लिपिकों के कुल रिक्त पदों के 50% पदों पर नियुक्ति दी जावे :

(1) विभागाध्यक्ष या उसका नामजद अधिकारी जो अतिरिक्त मुख्य अभियन्ता/अतिरिक्त विभागाध्यक्ष के पद से कम हैसियम का नहीं हो ।

(2) एक वरिष्ठ अधिकारी, जिसे मुख्य अभियन्ता ने नामजद किया हो और जो अधीक्षण अभियन्ता के पद से नीची हैसियत का नहीं हो ।

(3) सम्बन्धित विभाग का मुख्य लेखाधिकारी/वरिष्ठ लेखाधिकारी ।

<u>ऐसे वर्क चाज्ड कर्मचारी जिन्हें कनिष्ठ लिपिक के रूप से नियुक्त किया जाता है, जब नियुक्ति अधिकारी द्वारा संचालित टाईप</u>

परीक्षा में नियमों में विहित गति से नियुक्ति तारीख से एक वर्ष की अवधि के अन्दर उत्तीर्ण कर लेते है, उसके पश्चात उन्हें नियमित किया जाएगा ।"

In this view of the matter, I am unable to understand that how the entitlement of the petitioner for consideration to be appointed as LDC can be denied by the respondents because admittedly, the petitioner was appointed on 2.12.1983, he was declared semi-permanent w.e.f. 1.4.1986. Moreover, he has completed more than two years of service as on 1.4.1988. He was possessing qualification of higher secondary, which is prescribed for the post of LDC. As per aforesaid notification dated 21.12.1989 those work-charged employees who had completed two years of service as on 1.4.1988 were entitled to be considered for appointment on the post of L.D.C., if they were possessing academic qualification for the post of LDC against the posts which were in existence as on 1.1.88 in the Department.

It is further provided in the notification that after appointment, the incumbent is required to clear type test within one year, then, he was to be regularized on the post of LDC but in the reply, the claim of the petitioner for consideration on the post of LDC has been denied specifically on the ground that he was not having experience of typing. Admittedly, this was not the pre-condition in the notification for

providing appointment on the post of LDC to those work-charged employees who had completed two years of service on 1.4.1988 and were possessing requisite qualification. Thus, it is clear from the above discussions that the consideration of the petitioner's candidature for the post of LDC has been rejected on illegal premise. The petitioner was very much entitled to be considered for appointment on the post of L.D.C. in accordance with the recommendations made by Assistant Engineer when information was called by the Superintending Engineer vide Anenxure-6 and 7. Therefore, though the petitioner is not entitled to get minimum pay-scale which is prescribed for the post of LDC from the date of his appointment as work-charged employee but he is very much entitled for directions to the respondents for considering his candidature for the post of L.D.C. in pursuance of the amendment made in the Rules of 1957 vide notification dated 21.12.1989.

The controversy involved in the present writ petition has already been decided by this Court in case of Anand Roop Vs. State of Raj., reported in WLR 1992 (S) Raj. 340 wherein in similar circumstances, this Court directed that the case of the petitioner shall be considered for offering him appointment as L.D.C. in terms of proviso to Rule 7 (1) (b) of the aforesaid Rules of 1957 which was inserted vide notification dated 21.12.1989. In another judgment

also in case of Nagar Ram Choudhary Vs. State of Raj. & Ors., reported in WLR 1992 (S) Raj. 351, similar directions were issued by this Court.

In this view of the matter, this writ petition is partly allowed and it is held that the petitioner is not entitled to get the minimum of the pay-scale w.e.f. the date of his appointment or from the date of declaring him semi-permanent but the respondents are directed to consider the case of the petitioner for appointment on the post of LDC in accordance with the amendment dated 21.12.1989 within a period of two months and if the petitioner is found suitable as on 1.4.1988 or from subsequent date, then, he shall be given all consequential benefits and his pay may be fixed on notional basis in the cadre of LDC but petitioner will be entitled for arrears w.e.f. the date he preferred writ petition before this Court that is to say from 18.2.1994.

(GOPAL KRISHAN VYAS), J.

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